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OFFICE OF PETITIONS

In re Application of
Palley et al. :
Application No. 08/717,042 :
Filed: September 20, 1996 :
Title: Blast Resistant and Blast Directing
Container Assemblies :
:

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed January 30, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

This above-identified application became abandoned for failure to timely file a response to a non-final Office Action which was mailed on February 19, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 20, 2004. A Notice of Abandonment was mailed on October 1, 2004.

Petitioner contends that the non-final Office Action mailed on February 19, 2004 was never received. Petitioner states the office action was mailed to an old correspondence address (P.O. Box 31, Petersburg Va.). The correspondence address was changed with the U.S. Postal Service but the USPTO was not notified of the change to the correspondence address. The post office stopped forwarding mail on January 2, 2003. Petitioner has provided a copy of the application file and docket records to establish the office action was not received.

Petitioner's argument has been considered, but deemed unpersuasive. The failure to receive the non-final Office Action was not due to Office error or an irregularity in the mail. Petitioner failed to change the correspondence address of record with the Office. Where an application becomes abandoned as a consequence of a change of

correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence allow for withdrawing the holding of abandonment.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service: U.S. Patent and Trademark Office
(FedEx, UPS, DHL, etc.) Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



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